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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Docket No. S-20600A-08-0340

IN THE MATTER OF:
MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V.
VANCAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC,
An Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC;
An Arizona limited liability company

Respondents.

RESPONDENTS
MARK W. BOSWORTH
MARK BOSWORTH & ASSOCIATES, LLC
3 GRINGOS MEXICAN INVESTMENTS, LLC

RESPONSE TO THE SECURITIES
DIVISION'S MOTION TO ALLOW
TELEPHONIC TESTIMONY

Arizona Corporation Commission

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Respondents Mark W. Bosworth, Mark Bosworth & Associates, LLC and 3 Gringos Mexican Investments, LLC respectfully objects to the Securities Division's (Division) motion to allow telephonic testimony of witness Robert Bornholdt. The Division correctly notes that telephonic testimony is allowed and that the Commission has allowed telephonic testimony in some prior cases. Telephonic testimony is not appropriate for every witness. Typically telephonic testimony is appropriate for minor witnesses or witnesses whose testimony is uncontested. As the ACC is very well aware, Bornholdt will be a highly contested witness.

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2 In contrast, telephonic testimony is generally inappropriate for significant witnesses or witnesses
3 dealing with contested issues. The physical presence of the witness provides the opportunity to
4 observe the witness's demeanor, facial expressions and body language. This is important to the
5 Administrative Law Judge in weighing the credibility of testimony. The opportunity to observe
6 the witness is also critical for an effective cross-examination. It alerts follow-up when the
7 witness, while answering, gives physical cues that might indicate uncertainty, confusion,
8 evasion, or untruths.
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10 Respondent Bosworth has observed Bornholdt in person for hours in an extensive
11 deposition and has first hand knowledge Bornholdt's demeanor under oath in person will be
12 greatly diminished in value to respondent Bosworth by hiding the witness from the view of the
13 court, the public which he is licensed by the State of Arizona to represent, counsel, other
14 respondents and the Administrative Law Judge. Plainly stated the ACC is trying to hide a bad
15 witness. This action will greatly handicap remaining respondents and give an unnecessary and
16 unfair advantage to the ACC in this hearing. This would hardly be a level playing field. This
17 hearing has been on the calendar for months as noted in multiple responses from the ACC, the
18 ACC had the responsibility to prepare their witnesses properly for this long scheduled hearing.
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21 Bornholdt testifying in person enables all parties to present exhibits directly to the
22 witness and to direct the witness's attention to specific parts or statements. Mr. Bornholdt is not
23 an average citizen/witness asked to give of his time for the benefit of the general public. Mr.
24 Bornholdt has already admitted to committing fraud and multiple other offenses totaling millions
25 of dollars in the State of Arizona, which he has failed at this point to report to the Arizona
26 Department of Real Estate where he continues to hold an active Real Estate Broker's license. In
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1 addition, The State of Arizona Secretary of State where his performance bond was forfeited and
2 was required to pay in his behalf has revoked Bornholdt's notary license. Bornholdt has also
3 failed to report this as required by ARS to the Arizona Department of Real Estate. Bornholdt
4 also has several other industry ethics violations with the Arizona Board of Realtors where he had
5 to take additional ethics classes to settle their disciplinary actions from consumer complaints. Is
6 this really the type of witness the State intends to allow to hide behind a telephone line because
7 he ALLEGES he is unavailable? We sincerely doubt any assertion that Bornholdt is out of town
8 working or that any undue hardship would be placed upon him by requiring him to appear as a
9 witness at the hearing and no evidence has been offered to verify this new last minute claim.
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11 Bornholdt is currently the licensed broker (license # BR007742000) for New Home
12 Brokers where he has the daily responsibility of managing the sales people under his license.
13 Mr. Bornholdt has given no notice or assignment of a temporary office manager in his alleged
14 absence nor has he applied for a change of address, change of license status or residency status,
15 which his alleged and unconfirmed out of town status would require.
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17 Bornholdt is an extremely well compensated witness; he has already received (not just
18 promised) the benefit and relief of millions of dollars of liability and financial responsibility
19 being waived by his very curious settlement agreement with the ACC. In deed, the State of
20 Arizona and its citizens have paid millions of dollars in consideration for Bornholdt's agreement
21 to participate in this hearing and assist the ACC in its ongoing case against the remaining
22 Respondents Bosworth and Sargent.
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24 The State of Arizona required Respondent Bosworth and the owners and officers of the
25 businesses to hire a designated broker that the State of Arizona had carefully screened, educated,
26 trained, tested and certified/licensed to oversee the real estate transactions of the real estate
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1 business. Bornholdt was compensated hundreds of thousands of dollars for these duties, of
2 which he is now being called upon to testify. Given the huge number of exhibits and expected
3 rebuttal documents in this case, a telephonic witness will not have ready access to all of them.

4 Respondent Bosworth has extensive questioning of Bornholdt including his duties as a
5 designated broker. Bosworth anticipates calling extensive rebuttal witnesses in regards to
6 Bornholdt's testimony. We anticipate a minimum of three rebuttal witnesses and as many as
7 eleven rebuttal witnesses to include alleged victims and the recruiting done by Bornholdt on
8 behalf of the ACC among other things. We foresee extensive rebuttal documents being brought
9 into the hearing including videos of alleged seminars that include Bornholdt and other
10 respondents and many alleged victims. How is Bornholdt to identify
11 documents/signatures/persons including testifying extensively to his knowledge of where they
12 came from if he is not there to see them and authenticate them?
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15 We anticipate extensive rebuttal documents that will include AAC Title 4 Chapter 28
16 Article 13 and former Arizona Department of Real Estate Commissioner Sam Wercinski. How
17 can Bornholdt review rebuttal documents and videos if he is not physically there? And even if
18 the witness has a copy, the chance for confusion or miscommunication is greatly reduced when
19 the witness is physically present at the hearing. Further, the absence of the witness prevents
20 respondents from impeaching the witness with new documents as we believe will be the case
21 with Bornholdt. Moreover, without the presence of the witness, there will be no "face to face"
22 communication between counsel and the witness during cross-examination – thus preventing all
23 parties from developing rapport with the witness, and as well a control over the rhythm of the
24 cross examination.
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1 Respondent Bosworth was left out of the pretrial conference in regards to planning and
2 preparing for the time necessary to schedule and execute an appropriate hearing due to pending
3 settlement While not an attorney I find it unusual to plan a hearing without this or any other
4 information from Respondent Bosworth. On Bornholdt alone we anticipate (6) to (8) hours to
5 review general information, (2) two to (6) hours for each of the alleged claims/victims for a total
6 of (45) to (60) hours, (2) hours on his revoked Notary license and bond, (3) hours on other
7 ethical responsibility, duties and actions under Arizona Administrative Code Title 4 Chapter 28
8 Article 11, (5) hours regarding Article 5 and all advertising, (6) hours on his recruiting of victims
9 in this case for the ACC and the documents, claims and promises he made to them, not counting
10 unexpected items. This is approx (60) hours of who we believe is the key to this whole
11 investigation, Bornholdt. Would we not lose the whole case if one day Bornholdt decides or
12 becomes unavailable? Seems very risky and potentially costly and unnecessary. The
13 Administrative Law Judge has given NO time limits or time expectation to respondent Bosworth
14 of any kind for this hearing and is fully aware of respondent's inability to retain counsel and that
15 self-representation is the only reluctant choice available to Bosworth.
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19 If Bornholdt is going to be testifying he will not be able to "work" for days or possibly
20 more than a week, why not be here in person instead of somewhere else? His R/E license claims
21 he still lives in Scottsdale and resides there, or is that true? It seems the ACC would like to take
22 this extremely broad multi-million dollar claim they have made and sweep it out the door in a
23 few days like some parking ticket, without allowing the proper time this case warrants. How
24 much time is warranted in a 5 million dollar claim by the ACC?
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26 Commission Administrative Law Judges have denied motions for telephonic testimony
27 for important witnesses. For example, Judge Martin denied a motion to allow telephonic
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1 testimony when the testimony was from the applicant's only witness.¹ Likewise, Judge Kinsey
2 denied a motion to allow telephonic testimony where the witness was needed to address specific
3 issues of concern, as well as to "generally support the application and provide additional
4 information or clarification."²

5 Here, the Division describes Bornholdt as a "central witness" in the case who will
6 provide "highly probative testimony."³ This is exactly the type of witness that should never be
7 allowed to testify telephonically. Bornholdt, as an important witness, should be present in
8 person, so that he can be properly cross-examined in person, and that all parties including the
9 Administrative Law Judge can observe his demeanor, facial expressions and body language.
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11 Accordingly, Mark W. Bosworth, Mark Bosworth & Associates, LLC & 3 Gringos
12 Mexican Investments vigorously oppose the Division's motion to allow Bornholdt to testify by
13 telephone. In addition, they note that Bornholdt's very questionable alleged unavailability at this
14 very late hour further supports the need for a continuance, and support the Sargent's request for
15 such. We are gravely concerned this process will be compromised later because it has not been
16 properly planned for before it starts. Thank you.
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20 *12th September*
21 RESPECTFULLY SUBMITTED this 2nd ~~day~~ of June 2010
22

23 By 

24 Mark Bosworth
25 18094 N. 100th Street
26 Scottsdale, Arizona 85255

27 ¹ Procedural order dated February 24, 2009 in Docket No. T-03446A-08-0055.

28 ² Procedural Order dated September 24, 2007 in Docket No. T-03228A-06-0800.

³ Division Motion at 2:3-4.

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